

SEP 10 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBefore the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Further Streamlining ) CC Docket No. 01-150  
Measures for Domestic Section 214 )  
Authorizations )

To: The Commission

Comments of the United States Chamber of Commerce

The U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region, submits the following comments in this proceeding.

1. In this proceeding, the Commission seeks to streamline the approval process for domestic interstate communications common carriers that seek to acquire domestic transmission lines by acquisition of corporate control. Domestic interstate communications common carriers that seek to acquire domestic transmission lines by acquisition of assets are already authorized to do so without specific Commission approval by blanket rule. In this proceeding, the Commission proposes to more closely harmonize the two means of acquiring transmission lines – asset purchase and acquisition of corporate control – either by establishing a shorter application review period or by extending the blanket authority to cover acquisitions of corporate control.

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## The U.S. Chamber Supports Broad Deregulatory Steps

2. The U.S. Chamber of Commerce supports the proposal to streamline the transfer of control process and urges the Commission to do so by extending the blanket authority to cover corporate acquisitions of control, thereby eliminating the application requirement altogether. Furthermore, the U.S. Chamber of Commerce urges the Commission to go further and streamline its entire assignment of license and transfer of control process for all licensee companies, not just those that own domestic common carrier transmission lines.

### Background

3. Common carrier transmission lines are like broadcast or wireless communications facilities in that neither can be acquired without a prior public interest finding by the Commission. The requirement for Commission approval of the acquisition of domestic transmission lines is imposed by Section 214 of the Communications Act of 1934, as amended (47 U.S.C. §214(a)). The requirement for Commission approval of the acquisition of broadcast or wireless communications facilities is imposed by Section 310(d) of the Communications Act of 1934, as amended (47 U.S.C. §310(d)).

4. As the Commission points out in the instant Declaratory Ruling and Notice of Proposed Rule Making (“NPRM”) (Section III, A.3.), the Commission already has

streamlined the process for acquisition of common carrier transmission lines. For example, by Section 63.01 of the Commission's rules, adopted in 1999, common carriers have blanket authority to acquire any domestic transmission line (but not to acquire control of a corporation owning such lines). Similarly, with regard to wireless communications facilities, the Commission forbears from enforcing the requirements of §310(d) in the case of non-substantive or "*pro forma*" assignments of licenses *or* transfers of control of Commercial Mobile Radio Service licensees.

5. In the Declaratory Ruling portion of the instant proceeding, the Commission stated that acquisitions of corporate control are not included in the blanket authority of Rule 63.01 because such acquisitions often raise serious public interest concerns regarding the impact of the acquisition or merger on competition. It is theoretically possible, of course, that one company could acquire all of another common carrier's transmission lines by asset purchase. In that case the competitive effect, in terms of control of the transmission lines, would be the same as a corporate acquisition or merger. Yet the transaction would have been authorized by the blanket rule and would not have required prior Commission approval.

#### Business Requires the Flexibility to Structure Transactions without Regulatory Implications

6. Business needs to be free to structure a transaction in whatever way is dictated by the totality of the circumstances. Those circumstances may include tax considerations, financing requirements or historical constraints. The Commission's

review processes should be transparent to the transaction. The applicability or non-applicability of the Commission's review and approval process – which can be lengthy<sup>1</sup> – should not depend on whether the business transaction has been structured as an asset acquisition or a stock purchase.

7. The instant proceeding has been instituted “[i]n keeping with the pro-competitive, deregulatory goals of the [1996 Telecommunications] Act...” (NPRM, Sec. I, para. 3.) Minimizing the time between the execution of a purchase agreement and the consummation of that agreement is a crucial business concern. To its credit, the Commission has made the streamlining of the transaction review process a key deregulatory goal, as evidenced by the steps, mentioned above, that have already been taken. The Commission should continue its deregulatory progress by harmonizing the stock purchase requirements with the asset purchase requirements. With respect to transmission lines, the blanket authorization of Rule 63.01 should be expanded to cover both types of transactions. The sentence in the Rule that states, “This authority does not apply to acquisitions of corporate control” should be deleted.

8. There is precedent for the harmonization of the approach to stock acquisitions with the approach to asset acquisitions. As noted above, the Commission's forbearance with regard to *pro forma* transactions that would otherwise

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<sup>1</sup> In many cases, the Commission is prohibited from acting on assignment or transfer of control applications for a minimum of 30 days. Commission approval is not administratively final, however, for a minimum of 40 additional days. Thus a period of at least 70 days is built into the process, and this does not include processing time and application backlogs.

be subject to the prior approval requirements §310(d) of the Act, does not distinguish between asset acquisitions and stock acquisitions.

#### The Commission Should Extend its Forbearance to Noncommercial Wireless Licensees

9. With regard to the Commission's forbearance under §310(d) of the Act, the Commission should take this opportunity to broaden its deregulatory forbearance to all wireless licensees, not just those that are classified as Commercial Mobile Radio Services ("CMRSs"). Wireless licensees that are still subject to the Commission's prior approval procedures, even for *pro forma* transactions, are those that use their radio systems for purely internal, private, non-commercial communications. It is difficult to see why non-substantive transactions involving essentially internal communications systems remain subject to rigorous Commission application requirements, while transactions involving companies that provide commercial service to the public at large are exempt from prior approval requirements.

#### Meaningful Streamlining Requires Must Not Be Undermined by Other Regulations

10. Finally, the U.S. Chamber urges the Commission not to let the requirements of §310(d) of the Act undermine its deregulatory progress with regard to Rule 63.01. At the present time, Rule 63.01(a) grants a company blanket approval for acquisition of transmission lines "as long as it obtains all necessary authorizations from the Commission for use of radio frequencies."

11. In other words, if the transaction for the acquisition of transmission lines includes bucket trucks used for the maintenance of those lines, and if those bucket trucks are equipped with two-way radios used for communications with the repair crews (as is commonly the case), the transaction cannot go forward until the parties apply for and receive the prior approval of the Commission under §310(d) of the Act for the portion of the transaction involving assignment or transfer of the licenses for the radio frequencies. The blanket authorization for the acquisition of the transmission lines is essentially meaningless since the approval requirement for the other facilities operates to prevent prompt consummation of the transaction.

12. In this example, the acquisition of the radio licenses clearly is ancillary to the acquisition of the transmission lines. Yet this ancillary aspect of the transaction has the effect of introducing the very delay which the Commission has sought to eliminate by its streamlining initiatives. Unless this contingency is eliminated, the regulatory relief which the Commission seeks to grant in this proceeding is largely illusory.

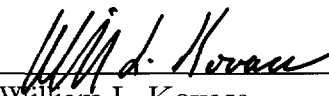
### Conclusion

13. The U.S. Chamber urges the Commission to streamline domestic §214 applications by broadening Rule 63.01 to include stock acquisitions. In addition, the U.S. Chamber urges the Commission to go further in its streamlining efforts by broadening its forbearance regarding *pro forma* transactions under §310(d) of the Act

to include noncommercial, wireless licensees. Finally, the U.S. Chamber urges the Commission to forbear from applying §310(d) requirements to transactions under Rule 63.01 that otherwise would not require prior Commission approval of any sort. These actions are in accord with the pro-competitive, deregulatory goals of the 1996 Telecommunications Act in that they reduce the transaction times and costs associated with unnecessary regulatory burdens.

Respectfully submitted,

United States Chamber of Commerce

  
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